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DIVISION OF PROFESSIONAL REGULATION

PUBLIC MEETING MINUTES:	Adult Entertainment Commission
MEETING DATE AND TIME:	Thursday, July 28, 2011 at 2:00 p.m.
PLACE:	Cannon Building, 861 Silver Lake Boulevard Conference Room A, Dover, Delaware 19904
MINUTES APPROVED:	October 27, 2011

MEMBERS PRESENT

James Nutter, Chairman
Maisha Britt, Public Member
Mary Kate McLaughlin, Public Member
Robb Carter, Public Member
Tiffany Trawick, Public Member

DIVISION STAFF/DEPUTY ATTORNEY GENERAL PRESENT

Andrew Kerber, Deputy Attorney General
James Collins, DPR Director
Michele Urbaniak, Administrative Specialist II
Sandra Wagner, Administrative Specialist III
Roger Akin, Chief Hearing Officer
Kristin Gibbons, Hearing Officer

ALSO PRESENT

Arthur Rosenheck
Jeffrey Baughman
Jeffrey Cohen
Willis J. Duckery

MEMBERS ABSENT

None

CALL TO ORDER

Mr. Nutter called the meeting to order at 2:16 p.m. Mr. Nutter welcomed Tiffany Trawick as a newly appointed Commission Member.

REVIEW AND APPROVAL OF MINUTES

The Commission reviewed the minutes from the April 28, 2011 meeting. Mr. Nutter advised that DAG Kerber recommended changing "does not believe" to "is not certain" under New Business/Review of Application for Adult-Oriented Retail Establishment/Leather Central. There

was no objection to the change. Ms. McLaughlin made a motion, seconded by Dr. Britt, to approve the minutes as amended. The motion passed unanimously.

NEW BUSINESS

Review of Applications for Licensure Renewal

Bob's Discount Adult Books, Inc. – Jeffrey Cohen

After review of the application, Mr. Nutter confirmed that Mr. Cohen was present at the meeting and asked Mr. Cohen to come forward in order to answer questions from the Commission. Dr. Britt expressed concern that employee, Martin Harkles Sr., had submitted an expired Florida drivers license, and asked Mr. Cohen if Mr. Harkles Sr. was a resident of Delaware. Mr. Cohen confirmed that Mr. Harkles Sr. does live in Delaware, but did not know if Mr. Harkles Sr. had applied for a Delaware drivers license or state I.D. Dr. Britt asked if Mr. Harkles Sr. had to drive for Bob's Discount Adult Books. Mr. Cohen indicated that Mr. Harkles Sr. does not drive for Bob's Discount Adult Books. Ms. McLaughlin stated that she was not concerned with whether or not Mr. Harkles Sr. had a current Delaware drivers license or state-issued I.D. She added that Mr. Harkles Sr. would have had to present a valid picture I.D. to the State Bureau of Identification in order to submit his request for a Criminal Background Report. Ms. Howard reported that no Criminal Background Reports had been received for Bob's Discount Adult Books. Mr. Cohen confirmed that he and all of his employees had ordered the reports. Ms. McLaughlin made a motion, seconded by Mr. Carter, to approve the renewal application of Bob's Discount Adult Books contingent on receipt of acceptable criminal background reports. The motion passed unanimously.

DVD Depot, Inc. – Arthur Rosenheck

After review of the application, Mr. Nutter confirmed that Mr. Rosenheck was present at the meeting. Mr. Nutter stated that two state criminal background reports were received for DVD Depot, but no federal criminal background reports were received. Dr. Britt made a motion, seconded by Mr. Carter, to approve the renewal application of DVD Depot contingent on receipt of acceptable state and federal criminal background reports. The motion passed unanimously.

Fairways Inn Topless Tavern – Willis Duckery

After review, Mr. Nutter confirmed that Mr. Duckery was present at the meeting and asked Mr. Duckery to come forward in order to answer questions from the Commission. Mr. Nutter asked Mr. Duckery to explain his process difficulties with the application. Mr. Duckery explained that he has three employees, himself and two bartenders. Everyone else working at Fairways Inn is an independent contractor. Mr. Duckery stated that he has a monthly "staff meeting", but that the independent contractors may or may not show up. If they do not show up for a staff meeting, they are fined. Mr. Duckery expressed that it is difficult to obtain all of the necessary information for the Certificates of Individual because he is reliant on his independent contractors to supply the information, particularly their social security cards. Mr. Duckery further stated that his establishment has lost several independent contractors due to the new criminal background report requirement. He added that he had to personally accompany several of the independent contractors to the SBI office and pay for their criminal background reports because they could not afford the \$69 fee.

Ms. McLaughlin stated that none of the independent contractors disclosed on their Certificates of Individual that they had any criminal convictions. However, many of the independent contractors did have criminal convictions on their background reports. Ms. McLaughlin asked Mr. Duckery to advise his "staff" that having criminal convictions does not necessarily mean that the Commission will deny an application; the Commission is looking for specific types of convictions on the reports. Mr. Duckery distributed copies to the Commission of the "Self Employment Agreement" that he requires all of his independent contractors to sign. Mr. Duckery

offered his opinion that the independent contractors answered the criminal conviction question as it pertained to “adult entertainment” convictions. Ms. McLaughlin stated that there was one criminal background report that included a charge of prostitution that concerned her. She added that the charge did not result in a conviction and that the date of the charge was “older”.

Mr. Nutter asked if Mr. Duckery pays the independent contractors. Mr. Duckery stated that he does not pay the entertainers; that they work strictly for tips and make their own schedules. He added that he only pays two bartenders and they work a set schedule. Mr. Nutter pointed out that the application was flagged by the Division for criminal background information and missing Division of Revenue License numbers for independent contractors. Mr. Duckery stated that he encourages all of his independent contractors to pay \$75 for a business license. Mr. Nutter asked Mr. Duckery to elaborate on his earlier statement that the entertainers could go to other establishments who offer the same type of entertainment and not have to obtain a criminal background report because the other establishments are not licensed under the Adult Entertainment Commission. Mr. Duckery confirmed that he had lost entertainers to other establishments due to the criminal background report requirement. Mr. Duckery stated that there are other adult entertainment establishments that are not licensed by the Commission. Mr. Nutter advised that the Commission is complaint-driven, and that the *Ice Lounge*, for example, was under investigation when he was appointed to the Commission. Ms. Trawick added that the Ice Lounge is “definitely” a place of adult entertainment.

Mr. Nutter asked Ms. Howard if the Division had any additional concerns with Mr. Duckery’s application. Ms. Howard stated that several of the photos attached to the Certificates of Individual forms were not current, and were the same photos used on the 2010 application. Mr. Duckery stated that he had personally taken all of the photographs and attached them to the forms, and that they were all current. Ms. Howard showed Mr. Duckery examples of the duplicate photos on both the 2010 and 2011 renewal applications. Ms. Howard will provide a list of names of unacceptable photos for Mr. Duckery, so that he can submit current photos.

Mr. Nutter asked Mr. Duckery if his application included all of his independent contractors. Mr. Duckery confirmed that all of his independent contractors were included in the application. Mr. Nutter reviewed the crimes listed in the Commission’s Statute and advised that the Commission had not observed any of the listed convictions in Mr. Duckery’s application. Ms. McLaughlin asked Ms. Howard to include Mr. Duckery’s “Self Employment Agreement” in his application file. Mr. Nutter stated that he appreciates the situation that Mr. Duckery is in; that he is applying for licensure and trying to comply with all of the Commission’s rules. Mr. Carter made a motion, seconded by Ms. McLaughlin, to approve the renewal application of Fairways Inn Topless Tavern contingent upon receipt of acceptable state and federal criminal background reports. The motion unanimously passed.

Mr. Nutter recognized DPR Director James Collins, who introduced himself to the Commission. Mr. Collins advised that a couple of years ago, the Statute was revised to make unlicensed adult entertainment a nuisance. Mr. Collins added that the Division has referred subsequent complaints for unlicensed activity, but has not seen any movement on those complaints. Mr. Collins clarified that law enforcement must conduct investigations of unlicensed adult entertainment, not the Division of Professional Regulation. Mr. Collins stated that he and the Division are committed to work with the Attorney General’s office regarding adult entertainment investigations. Mr. Nutter asked Mr. Collins to confirm that the *Ice Lounge* had previously been investigated. Mr. Collins stated that the *Ice Lounge* was investigated before the law changed; after the law changed, the Division forwarded any open complaints to the Attorney General’s office. Ms. McLaughlin asked if the Commission needs to initiate a new complaint, or if the original complaint is still being worked on. Mr. Collins stated that based on its location, the *Ice Lounge* does not qualify for an Adult Entertainment license. Mr. Carter stated that *Hardwired*

also does not qualify, based on its location in a shopping center. Mr. Nutter stated that it is time to make a referral to have the *Ice Lounge* investigated. Mr. Collins stated that he would appreciate a letter from the Commission expressing the Commission's concern that complaints need to be followed through. Mr. Nutter asked Ms. Howard to work with DAG Kerber to draft a letter from the Commission to Director Collins expressing the Commission's desire to have any open complaints for adult entertainment establishments investigated, particularly the *Ice Lounge*, the *Gold Club*, and *Hardwired*. Ms. Howard added that she has recently filed a complaint on *Hak's*, based on its billboard and website.

UNFINISHED BUSINESS

Adult-Oriented Retail Establishments

Ms. Howard advised that Adult-Oriented Retail Establishments would be an ongoing agenda item per Mr. Nutter's request at the Commission's April meeting. There was nothing new to report.

Leather Central – Federal Criminal Background Reports

Ms. Howard stated that the Division still had not received federal criminal background reports for *Leather Central*.

COMPLAINT STATUS

Complaint 16-03-10 (Nutter)

Mr. Nutter reported that Complaint 16-03-10 had been dismissed by the Attorney General's office.

Complaint 16-04-10 (Nutter)

Mr. Nutter advised that the hearing for complaint 16-04-10 would be heard by a DPR hearing officer. Ms. Howard confirmed that Complaint 16-04-10 was for unlicensed Adult-Oriented Retail. Mr. Collins introduced Chief Hearing Officer, Roger Akin, to the Commission. Mr. Collins and Mr. Akin explained the Division's new hearing officer process, which began January 1, 2011. Mr. Collins stated that the Division had recently added two additional investigators, two hearing officers, and another prosecutor in the Attorney General's office. Mr. Collins added that that Division currently receives about 800 complaints per year.

OTHER BUSINESS BEFORE THE BOARD (for discussion only)

None

PUBLIC COMMENT

There was no public comment.

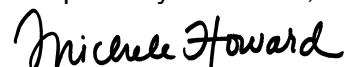
NEXT SCHEDULED MEETING

The next meeting will be held on October 27, 2011 at 2:00 p.m. in second-floor Conference Room A of the Cannon Building located at 861 Silver Lake Boulevard in Dover.

ADJOURNMENT

Dr. Britt made a motion, seconded by Mr. Carter to adjourn the meeting at 3:11 p.m. The motion unanimously carried.

Respectfully submitted,



Michele Howard
Administrative Specialist II